

## LABOUR DEPARTMENT

The 29th January, 1987

No. 9/6/86-Lab./11294.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of M/s Oriental Science Apparatus Workshops, Ambala Cantt:—

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT,  
AMBALA

Ref. No. 100 of 1984

SHRI BANSI LAL ETC., WORKMEN C/O SHRI BALBIR SINGH SAINI AND THE MANAGEMENT  
OF THE MESSRS ORIENTAL SCIENCE APPARATUS WORKSHOPS, AMBALA CANTT

Present :—

Shri Balbir Singh Saini for workman.  
Shri R.L. Gupta for respondent.

## AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—*vide* clause (C) of sub-section (i) of section 10 of Industrial Disputes Act, 1947, referred dispute between Shri Bansi Lal etc. and Messrs Oriental Science Apparatus Workshops, Ambala Cantt. to this Court. The terms of the reference are as under :—

"Whether termination of services of workmen is justified and correct, if not, what relief are they entitled?"

Workmen through their demand notice under section 2-(A) of Industrial Disputes Act, 1947 and statement of claim have alleged that they were in the service of respondent-management for the last many years. They served the Respondent-management to the satisfaction while discharging their duties honestly, earnestly and efficiently. In 1979 all the workers of respondent-management formed union in the name of Ambala Scientific and O.S.A.W. workers union, Ambala Cantt and got it registered under Trade Union Act, 1926. Thereafter, a charter of demand was served upon the respondent-management on which conciliation proceedings were taken up before the Labour-cum-Conciliation Officer, Ambala Cantt. The management felt annoyed because it had to give certain concessions and leaves to the workmen prior to it the Management used to treat all the workmen as their slaves. The management started harassing the workmen and ultimately got implicated all the three workmen, namely, Bansi Lal, Sham Lal and Hem Raj and their outsider union leader; so called legal adviser in case under section 307 I.P.C. In the custody of police they were beaten, harassed and thereafter they were bailed out. During the pendency of criminal proceedings against them, Management appointed Shri Ashok Kumar Gupta as a Inquiry Officer but the workmen did not take part in the inquiry proceedings, lodged protest but inquiry proceedings were conducted *ex parte* on the basis of report of Inquiry Officer their services were terminated. It was contended that inquiry was not conducted in a fair, proper and impartial manner. So it has been vitiated and the termination on the basis of that inquiry report is unjust and illegal, so they prayed that the suspension of workmen from 6th November, 1980 be declared illegal and their termination, dated 7th January, 1981 be also declared illegal and they be got reinstated with continuity in service and with full back wages.

Respondent-management appeared, contested the dispute and contended that the respondent's firm is a well reputed firm. It had been always looking after the welfare of all the workmen and their service conditions. In the history of the respondents firm there had been no industrial dispute and no industrial unrest prior to the incident, in question. The management never opposed the workmen either for forming union and joining the union activities. Demand notices which were served by the workers union on 4th July, 1980 were received on 7th July, 1980. It was mutually settled within few days, i.e., on 25th July, 1980, so question of the management averse to the formation of union does not arise. Shri Bansi Lal present workman was president of union and the settlement was signed by him on behalf of the union. After this settlement the workers had been functioning properly but due to some misguidance and by some political exploiters, they took out a procession which they brought at the main gate of the factory at the residence of the factory Manager, Shri Y.R. Mehra and claimed that Pawan Kumar be got released who was in the custody of Haryana Police apprehending that Pawan Kumar was got arrested by the respondent-management. But, in spite of assurance given by the management that they have nothing to do with Shri Pawan Kumar. Management never got him implicated in any matter with the police but the workmen were not satisfied with the reply of the management. The workmen caught hold of Shri Y.R. Mehra from his neck gave him beating. He received stone injuries on his left arm and knee. House of factory manager residences of Shri Panna Lal and Shri Laxmi Sagar, owners of the factory were also stoned, by means of that the window panes were damaged and factory gate was also damaged. Shri Y.R. Mehra got registered a case against the leaders of processionist, they were arrested. Case was registered against them. All the three workmen were issued show-cause notices regarding their mis-

conduct they filed replies. Management was not satisfied with their replies. So it appointed Shri A.K. Gupta, Inquiry Officer to hold the inquiry. The Inquiry Officer summoned the workmen three times but, in spite of that they did not participate in the inquiry proceedings, so *ex parte* proceedings were taken up against them. The Inquiry Officer completed the inquiry proceedings and submitted his report to the management. On the basis of the same management reached at the conclusion that the evidence, which came before the Inquiry Officer found that all the three workmen were at fault of misconduct by way of making an riotous Act, instigated the workmen to take out procession and stoned the residence of factory manager and owners of the factory and they also indulged in holiganism. They also caused beating and injuries by way of stoning to Shri Y.R. Mehra due to this misconduct the management terminated services of workmen Shri Bansi Lal, Sham Lal and Hem Raj, etc.

Workmen filed their replications they controverted the contentions of the respondent-management.

On the pleadings of the parties, the following issues were framed : .

**Issues—**

1. Whether termination order, dated 7th January, 1981 regarding the services of applicants is according to law, if not, its effect ? OPM
2. Whether inquiry proceedings are vitiated in reasons alleged by the applicants, if so, its effect ?
- 2(A) Whether services of workmen were terminated on account of trade union victimisation, if so, its effect ? OPW
3. Relief ?

References. Bansi Lal *versus* O.S.A.W. No. 100/84, Shri Sham Lal *versus* O.S.A.W. No. 103 of 1984 and Shri Hem Raj *versus* O.S.A.W. No. 104/84 were consolidated at the request of the parties because all the cases are of same nature, between the same parties, same question of law and facts are involved. It was also ordered that proceedings shall be taken up in reference Bansi Lal *versus* O.S.A.W. No. 100/84.

Respondent-management moved an application on 16th March, 1985 that issue No. 2 be treated as an preliminary issue. Copy of this application was handed over to the workman which was fixed for reply for 11th April, 1985. On that day no reply to this application was filed and the application was also not opposed, so on 11th April, 1985 it was ordered that issue No. 2 be treated as an "preliminary" issue and the reference was fixed for summoning the evidence of the workman.

All the workmen, namely, Bansi Lal, Sham Lal and Hem Raj appeared in the witness-box. They also examined Shri Balak Ram AW-4 and supported their case while the management examined MW-1 Shri Sunmukh Singh and MW-2 Shri Balram supported the case of the management along with certain documents which have been exhibited in evidence and are on the file.

I have heard Shri Balbir Singh Saini for all the workmen and Shri R.L. Gupta for respondent-management and have also gone through the oral and documentary evidence placed on the file, after affording thoughtful consideration to the whole matter my findings on issue No. 2 are as under:

**Issue No. 2—**

Onus of this issue was placed negatively on the management. Respondent to discharge onus of this issue that the inquiry proceedings are proper and valid examined Shri Sunmukh Singh as 'MW-1'. He deposed on oath by saying that he is a Personnel Officer in OSAW, Ambala Cantt. He also deposed that he has been serving the respondent-management for the last 38 years. Relationship between the parties remained quite, cordial and peaceful. In 1979 workmen of the respondent-management formed an union and served the charter of demand to the management which was compromised between the parties and a copy of that settlement is Ex-M2.

He further deposed that on 17th October, 1980 the workmen of respondent came at the residence of factory manager in a procession and handled him, stoned his residence. On the basis of the same a criminal case was registered against them. S/Shri Bansi Lal, Sham Lal and Hem Raj were leading the procession. Shri Y.R. Mehra, factory manager issued charge-sheet on 6th November, 1980 to the workmen. Photostat copies of charge-sheets are M-3 to M-5 which were replied by the workmen. Replies of all the three workmen were found unsatisfactory. On the basis of the same Inquiry Officer was appointed to go into the mis-conduct of the workmen. Shri A.K. Gupta was appointed as an Inquiry Officer. Decision to this effect of the management is contained in Ex-M-9 to Ex-M-11. Replies of charge-sheets of the workmen are Ex-M-6 to Ex-M-8. Notices were issued to all the workmen to join the inquiry proceedings but they remained away from the inquiry proceedings, in spite of their services. The Inquiry Officer afforded three opportunities to them by asking them to join the inquiry proceedings but they knowingly absented themselves. Thereafter, the Inquiry Officer proceeded *ex parte* against the workmen.

Recorded statements of witnesses, completed the inquiry proceedings and thereafter; he submitted his inquiry report Ex-M-17-18 etc. He stated that Shri Y.R. Mehra has expired, he identified the writing on the papers. He also stated that Shri A.K. Gupta has also died, he also identified his signatures on the proceedings. He also stated that the whole of the inquiry proceedings were conducted by Shri A.K. Gupta in his presence because he represented the case of the management before Inquiry Officer. He also submitted that Shri Prabhu Dass, Security Officer produced letters Ex-M-14 to Ex-M-16 which read that he informed the workmen about his inquiry proceedings. These letters were not accepted by the workmen. He also stated that when the workmen refused to take Ex-M-14-15-16 then these were pasted on the notice-board of the factory as per standing orders. He also stated that letters were also despatched by post to the workmen that they should join the inquiry proceedings but in spite of that they boycotted the inquiry proceedings. Copies of inquiry proceedings are Ex-M-19 to M-21. Statements of Shri Deepak Chawla, Shri J.S. Sodi and Balram were recorded in his presence which are Ex-M-33 to M-35. Thereafter; the evidence of the management was closed. His statement was recorded which is Ex-M-36. Photostat copy of the same is Ex-M-37. Inquiry Officer's report is Ex-M-38. Management after going through the inquiry report took a decision that the workmen be dismissed from the service. Accordingly, on the basis of inquiry report and as per standing orders of the management all the three workmen were dismissed from service. In cross-examination he stated that from 17th October, 1979 to 17th October, 1980 management did not terminate service of any workman. If any workman left service of his own in these circumstances he did not recollect the name of that workman. He denied the suggestion that 120 workmen were terminated from the service by the management. He stated that he cannot say that when photograph Ex-A-2 was taken, he identified signatures of Shri Y.R. Mehra on Mark-B-C-D-F. He further stated that Ex-A-5 to Ex-A-8 bear signatures of Shri Y.R. Mehra. He also submitted that Shri Bansi Lal was President of union, Shri Sham Lal was Secretary, and Shri Hem Raj used to be Cashier of the union. He stated that Shri Bachan Singh resigned from service.

MW-2 Shri Balram stated that he has been serving the respondent-management for the last 18 or 20 years. He further stated that workers union was formed in respondent-management in 1979. Since 1980 he has been coming President of the union. He further stated that domestic inquiry was conducted against Shri Bansi Lal, Sham Lal and Hem Raj. His statement was recorded by the Inquiry Officer. Photostat copy of his statement is Ex-M-35. He further stated that Shri Bansi Lal, Sham Lal and Hem Raj used to be office-bearers of the union. After that Inquiry their services were terminated. In cross-examination he stated that his statement was recorded by Inquiry Officer in Security Office after lunch. Shri Arjun used to be Vice-President, while Shri Balak Ram was General Secretary of the union. Now they are no longer in the service of respondent-management. He also stated that he was a witness in the police case against the workmen. He denied the suggestion that he along with Shri Balak Ram were removed from the union. He further denied the suggestion that owner of the management gave them Rs. 5,000 each for breaking the union. He further stated that he filed a Civil Suit. Copy of that judgement is Ex-M-2/1.

All the three workmen appeared in their defences they stated that they were removed from service on 7th January, 1981. Union was formed in 1979. They were office-bearers of the union. Union served demand notice upon the management. Certain demands were conceded, certain demands were left unsettled. Thereafter; one Pawan Kumar was arrested. Management got implicated Shri Bansi Lal, Sham Lal, Hem Raj and Shri B.S. Saini in false criminal case in which they have been acquitted. Shri Deepak Chawla, Shri Sodi and Shri Y. R. Mehra were witnesses in that case. Only Shri Jaspal Sodi was examined who resiled. Other witnesses did not appear in the Court. They also stated that they were summoned by the Inquiry Officer. They did not join the inquiry proceedings. They requested the Inquiry Officer to conduct inquiry proceedings outside the factory premises. They also requested the Inquiry Officer that they should be allowed to engage a legal practitioner to defend their case but their request was turned down. It was also contended that they were victimised due to their trade union activities. In cross-examination they stated charge-sheets were served upon them which were replied by them. They further stated that their presence used to be marked outside the security office of the main gate of the factory. They also stated that factory workers were beaten. False case was registered against them and many workers were terminated on false grounds. They also stated that they were got expelled by the management from the union and their election was got declared as a invalid one. It was also stated by them that the owners of the management did not appear as a witness in a criminal case which was registered against them.

Shri Balak Ram supported the statement of all the workmen Shri Bansi Lal etc.

Shri Balbir Singh Saini, Authorised Representative of all the three workmen submitted that first time in the history of O.S.A.W. workers formed a union in 1979. Shri Bansi Lal, President, Shri Sham Lal, Secretary and Shri Hem Raj was Cashier of the union. Union served a demand notice upon the management. Some demands were settled, while demands of bonus, return of security deposits were remained unsettled. He further submitted that on 17th October, 1980, factory manager got a false case registered,—*vide* FIR No. 630, dated 17th October, 1980 against all the three workmen and one Bachan Singh and Shri Balbir Singh Saini, Legal Advisor of the union. Thereafter Shri Y.R. Mehra got three workmen suspended, Inquiry was held in the premises of the management which was boycotted by all the three workmen. Inquiry proceedings were unfairly conducted. He firstly, argued that Inquiry Officer Shri A.K. Gupta was not properly appointed by the real owners of the management. He was appointed by Shri Y.R. Mehra, Manager of the respondent-management. When Manager was not duly authorised to appoint the Inquiry Officer. He further argued that a criminal case was pending against the workmen.

so till the decision of that case. The Inquiry Officer should have not been appointed, nor the inquiry proceedings should have been carried out. Thirdly, he argued that neither Inquiry Officer nor witnesses were examined in this Court. Shri Y.R. Mehra and Shri A.K. Gupta have died, so they could not be examined. So it is a great loss to workmen.

Fourthly, he argued that original inquiry file was not produced by the management in its evidence.

Workmen were not allowed to be defended by their legal advisor which shows the biasness of the management due to that fact the workmen could not get fair deal from the Inquiry Officer.

Statement of Shri Balram one of the witnesses of the management is not reliable because he was expelled by the union for taking money from the employers and offering Rs. 1,000 to President of the union Shri Bansi Lal as an bribe. His statement was attacked on the ground that he had come to the court in the car of the management. He argued that Shri Balak Ram deposed that in December, 1980 Shri Panna Lal, owner and factory manager Shri Y. R. Mehra asked him to sign some papers telling that they wanted to remove the three workmen claimants their service but he refused to sign. But Shri Balram MW-2 signed those papers. He further argued that from the circumstances which were prevailing in the factory during December, 1980 which have been brought on the file by authorised representative of the workmen and other factors; it is clear that no inquiry was at all conducted in the factory against the workmen. It was also contended that charge-sheets were issued with an closed mind and were pre-judged which read that workmen instigated other workmen to go on strike. These allegations he argued are unfounded. No workman was in fact named who instigated the other workman. The allegations are vague and incorrect, so he argued that in view of the above facts and circumstances there was an apprehension in the mind of the workmen that they would be removed from the service and the matters were pre-judged. He also argued that the proceedings of the inquiry were not stayed even though the workmen have requested for the same because they were facing serious criminal cases against them on the allegations as contained in the charge-sheets. In other words they were facing trial in criminal case under sections 307, 452, 148, 149, 427, and 506 IPC in which life imprisonment and fine both are prescribed. It was also argued that Inquiry Officer was an outsider, he was not employee of the factory. According to the standing orders of the management an employee of the factory should have been appointed as an Inquiry Officer. He also argued that in sub-para 2(A) it has been prescribed that such a workman may be supported by the another workman of the choice of the workman but no assistance was afforded to the workmen. So they were deprived from their valuable right. So he argued the inquiry was in fact *mala fide*. It was not proper and fair and due to these facts the workmen remained away from the inquiry proceedings. He further submitted that about 120 workmen were removed from service during this period. Workmen had written to various authorities about high handedness of the management but none listened to them. He further argued that the acts of management regarding termination of services of all the three workmen is most unfair and inquiry was vitiated and the workmen were entitled to reinstatement and other reliefs.

From the side of the Respondent-management Shri R.L. Gupta advanced arguments by saying that Shri Sunmukh Singh and Shri Balram have been examined to establish that the inquiry conducted by Shri A.K. Gupta was fair and proper. He argued that workmen had got an statutory right to form an union which was formed by them. Demand notice was served upon the owners. Major demands were conceded and settlement was arrived at between the parties. One Pawan Kumar was arrested by the Haryana police, workmen apprehended hand of management in arrest of Shri Pawan Kumar. In fact management had no concern about that arrest, in spite of, assurance by the management by all the three workmen led a procession at the houses of Shri Y. R. Mehra and houses of partners of the management; Shri Panna Lal and Shri Laxmi Sagar. Workmen and their co-workers manhandled Shri Y. R. Mehra, caused him injuries, stoned the house of Shri Y.R. Mehra, Shri Panna Lal and Shri Laxmi Sagar. It was also submitted that Shri Y. R. Mehra, factory Manager was fully empowered under the standing orders of the management to appoint Inquiry Officer. Accordingly Shri A. K. Gupta was appointed Inquiry Officer who was an legal practitioner and was an outsider, who was most above board and as impartial. It was also contended that Inquiry Officer summoned the workmen thrice to participate in the inquiry proceedings, but they knowingly boycotted to join the inquiry proceedings. He also argued that pendency of a criminal case against the workmen is no bar for conducting inquiry proceedings.

Shri Naveen Kumar Gupta is not available while Shri J.S. Bedi had been won over by the workmen, so he could not be examined, while Shri Y.R. Mehra and Shri A.K. Gupta have died, so they could not be examined in this Court.

Shri R.L. Gupta further argued that none of the workmen appeared before the Inquiry Officer, nor they made any written request to the Inquiry Officer that they be allowed to be represented by Shri Balbir Singh Saini or any other legal advisor.

He also argued that charge-sheets were served with an open mind and no such material other than the allegations were mentioned in the charge-sheets. He also argued that conduct of Shri A. K. Gupta was most fair and above board because he afforded full opportunities to the workmen to appear and join the inquiry proceedings, but the workmen knowingly stayed away from the inquiry proceedings.

He also argued that Inquiry Officer submitted his findings *ex parte*. Inquiry Proceedings which were accepted by the management and on the basis of those findings services of all the three workmen were terminated. He submitted that inquiry conducted by Shri A.K. Gupta was fair and proper. It has not been vitiated by any means.

Shri B.S. Saini argued that during *ex parte* domestic inquiry no reasonable opportunity to defend the interest of the workmen was afforded nor the workmen were allowed to engage legal practitioner. He has drawn my attention towards 1983 Vol. 1 page 256. There is no dispute with the principles laid down in the judicial pronouncement under reference but in the case in hand in fact the workmen never appeared before Inquiry Officer. They boycotted the inquiry proceedings and never made any written or oral request that they be allowed to join the inquiry proceedings and be allowed to be represented by legal practitioner.

Authorised Representative of the workmen also referred AIR 1957 Allahabad, page 411 para (B) in which it was observed that appointment of a biased person for inquiry is not proper. He argued that in this case Shri A.K. Gupta was appointed as an Inquiry Officer who was a biased person, so inquiry proceedings conducted by him are unfair and improper.

On the other hand the Ld. A. R. of respondent-management has drawn my attention towards 1964 Vol. 11 LLJ page 139 Saran Motors Pvt. Ltd New Delhi Vs. Visnava Nath and others in which it was observed that a lawyer engaged by the employer for conducting domestic inquiry, such a person cannot be termed as a biased person.

Shri B.S. Saini also argued that in the case in hand the management issued singal show cause notice, second show cause notice was not issued to the workmen, so the workmen were debarred from the second opportunity of their defence.

Shri Balbir Singh Saini also cited an judicial pronouncement of my Ld. predecessor Shri I. P. Chaudhary the then Presiding Officer, Labour Court, Haryana, Faridabad or R. No. 1372 in which he took a view that if against any workman criminal cases are pending, connected with the allegations served in chargesheet in those circumstances domestic enquiry should not be initiated.

Regarding the above judicial pronouncement with due respect I would like to point out that this judicial pronouncement is not all binding on the undersigned because this view was not upheld any superior court.

He also argued that a criminal case was pending so departmental inquiry should have not been initiated. He cited 1900 J & K page 73 Haronajan Singh Vs. Transport Commissioner. He cited 1981 Vol-II SLR page 365 case D.D. Sengar Vs. Punjab National Bank in which their lordsip observed that departmental proceedings be stayed till the disposal of the criminal case.

On the other hand Shri R.L. Gupta referred 1979 Vol. 1 LLJ G. Ravinderam Naiar Vs. Chairman Kochin Port Trust page 94 in which it was held that there is no bar in parallel proceedings before a criminal court and a disciplinary authority. Acquittal in a criminal cases does not necessarily bar proceedings by the disciplinary authority.

He further referred to 1986 LAB IC 1281 Titled M. M. Rubber Company Ltd., Madras Vs. Presiding Officer, Labour Court, Madras in which it was observed that Industrial Disputes Act, 1947 scheduled two entry three domestic inquiries and criminal prosecution initiated against the workmen in respect of same act—acquittal of workmen by criminal court. Domestic inquiry can be proceeded. Notwithstanding acquittal Domestic inquiry holding the workman guilty of the acts of misconduct was fair and proper. In accordance with the principle of natural justice and in fact the Labour Court had not said anything against, the findings given by the Inquiry Officer. On merits in such a situation it was not open to the High Court to re- appreciate the evidence and substitute its findings.

In view of the above judicial pronouncement referred and discussed with all due respect I am of the considered view that the citations referred by Shri B.S. Saini of Hon'ble J & K High Court which was in the year 1900 and the another citation is of the year 1981 of the Hon'ble Punjab & Haryana High Court but Shri R.L. Gupta cited 1979—LLJ of Kerala High Court and the latest judicial pronouncement of Hon'ble Madras High Court 1986 LAB IC 1281 of D.B. in which it was observed that the domestic inquiry and criminal prosecutions initiated against the workmen in respect of same Act—Acquittal of workman by criminal court domestic inquiry can be proceeded with notwithstanding acquittal.

In view of the latest judgement of Hon'ble Double Bench it has been made clear that simultaneous proceedings in criminal cases and domestic inquiry on a similar charge is not at all barred, the Hon'ble Judges have gone one step further by observing that domestic inquiry even can be proceeded within the workman if he has been acquitted on criminal charge.

Shri B.S. Saini also argued that the amendment of Model standing orders by the Government Haryana in 1975 and by virtue of central model standing orders. The earlier certified standing orders of respondent shall stand superceded. But this argument is not tenable because this position has been made clear by the Karnataka Hon. High Court. In 1985 Vol-I LLJ page 210 in which it was observed that the language of section 12(A) makes it clear that the model standing orders shall be deemed applicable until the standing orders are made as contemplated under the act the reference to standing orders as finally. Certified under the Act in section 12(A) is obviously to the first standing order made for the establishment after the Act came into force. It, therefore, follows that if the model standing orders are amended subsequently to the coming into operation of the first standing order in respect of particular establishment the same do not automatically become applicable to the establishment concern steps have to be taken to amend the existing the order in accordance with section 10 of the Act. Until such steps are taken to amend the existing standing order to bring them in confirmation with the amended model standing orders. The amended standing orders will not be applicable to the establishment.

In 1965 Vol-1 LLJ page 426 Dunlop Rubber Company India Ltd. Vs. and the workmen. It was observed that in the standing orders it was provided that an employee against whom the domestic inquiry was pending if he is a member of trade union. In those circumstances a legal adviser of the trade union who is a member of that trade union shall be permitted to assist the workmen in the inquiry proceedings.

In view of the above evidence case laws refer thereto and after affording thoughtful consideration to the workmen addressed by Ld. A. R. of the parties. I reach at the conclusion that in the case in hand the matter is in fact very simple it is admitted that the employees of the management formed trade union it was got registered. It issued demand notice. Settlement was arrived at between the parties and there was a complete Industrial peace in the business of the management. The mystery of arrest of Shri Pawan Kumar has not yet been solved on the file, that at whose instance and in what circumstance Shri Pawan Kumar was arrested by the Haryana Police. Due to the arrest of Shri Pawan Kumar by Haryana police all the three workmen are one Shri Bachan Singh and Shri B.S. Saini instigated all the workmen of the respondent-management who appeared in procession at the house of the factory manager Shri Y.R. Mehra shouted slogans caught hold of Shri Y.R. Mehra by his neck man-handled him who was saved on the intervention of Shri Naveen Kumar, Shri J.S. Bedi etc. He rushed in his house saved his life. Thereafter, all the workmen including the present workmen stoned the houses of Shri Y.R. Mehra Shri Panna Lal and Shri Laxmi Sagar caused damages. Thereafter, Shri Y.R. Mehra got registered a criminal case in which all the three workmen and their legal advisor Shri B.S. Saini were arrested.

The management called for explanations of the workmen. Their replies were found unsatisfactory and thereafter they appointed Shri A.K. Gupta as an Inquiry Officer to go into the matter and find out the truth. Show cause notices were issued. Charge-sheets were served. Replies were obtained prior to appointment of the Inquiry Officer.

MW-1 Shri Sunmukhi Singh stated that three times registered letters were issued. Which were delivered to all the three workmen but they boycotted the inquiry proceedings.

The Inquiry Officer went into the question very deeply followed the inquiry norms properly conducted the inquiry proceedings and gave findings against all the three workmen that they were guilty of their misconduct.

In 1960 LLJ Vol-1 Supreme Court page 13. It was observed that the workmen have got right to proceed on just strike and not on illegal strike.

In the case in hand when the demand notice had been served. The matter had been settled between the parties at that time the workmen should have not resorted to violence by way of forming un-lawful assembly, while holding the procession at the house of Shri Y.R. Mehra. They should not have man handled Shri Y.R. Mehra. They should not have stoned and damaged houses of Shri Y.R. Mehra and partners of respondent-management.

It was observed in 1981 Vol-14 Labour and Industrial Case page 557 that adequate opportunity to contest party be given. Secondly, hearing must be before an impartial Tribunal. Thirdly, decision must be made in good faith. Fourthly, there must be an oral course of procedure.

In the case in hand Shri A.K. Gupta, Inquiry Officer issued notices thrice through registered post. All the workmen were served all the times but they boycotted the proceedings wilfully.

Secondly, Shri A.K. Gupta was an impartial person who conducted the proceedings impartially.

Thirdly, he after applying his mind gave correct and just findings.

Fourthly, the procedure of inquiry followed by him is also a just one.

In 1982 Vol.-60 page 50 in a case J.D. Jain Vs. State Bank of India. It was observed that firstly that in domestic inquiry into misconduct, the guilty of the accused workmen need not to be established beyond reasonable doubt as in a criminal prosecution, proof of misconduct is sufficient.

Secondly, in domestic inquiry strict rules of evidence are not applicable and all material which are logically probative for prudent mind are permissible.

Thirdly, for the purpose of a domestic inquiry a complaint by the person aggrieved by misconduct, not frivolous, but substantive by circumstantial evidence is enough. No rule of law enjoins with the complaint as to be in life.

In view of my above discussions I am of the considered view that there is nothing on the file that how Shri A.K. Gupta was a biased person, nor there is anything on the file that the inquiry was not conducted according to the proper procedure. In fact the real circumstances which have come into light are that the workmen themselves boycotted the domestic inquiry proceedings. They did not take part in the inquiry proceedings in other words they wilfully absented themselves. There is no oral and written request from their side that they be allowed to be represented by Shri B.S. Saini, Shri A.K. Gupta conducted the inquiry proceedings in a most proper and fair manner and submitted his inquiry report to the management.

The main stress was laid down by Shri B.S. Saini on the contention that when a criminal case is pending in criminal court and the workmen are facing serious nature of offences. In those circumstances the parallel domestic inquiry is not justified but in the judicial pronouncements cited above.

1986 LAB IC 1281 it was observed that both the proceedings can go on simultaneously and there is no bar in holding domestic inquiry when a criminal case is pending between the parties.

The minutes perusal of inquiry file and inquiry findings it would be clear that there was a misconduct on the part of the workmen because they went at the house of factory manager in procession, man-handled him, threatened him to death and when he was saved by certain persons. The workmen stoned and damaged the house of the factory manager as well as partners of the management.

The another contentions of the Ld. A.R. of the workmen that Shri J.S. Bedi and Naveen Kumar were not examined regarding that factor there is a plausible explanation from the side of the management that Shri Naveen Kumar has left the service of management and Shri J.S. Bedi is also a Labour Leader and thus has been won over by the workmen. It was also argued by Ld. A.R. of the workmen that the original inquiry file was not produced and was not exhibited but this contention also does not carry any weight because original inquiry file was brought by Shri Sunmukh Singh MW-1 and with the help of that he made statement and photostat copy of the same has been placed on the file. Shri B.S. Saini did not make any request that this file be got placed on the judicial file. Even that the time of the arguments he did not submit that what harm has been caused to the interest of the workmen for not producing the original file when photo stat copy of that file has been duly proved in the statement of Shri Sunmukh Singh.

In view of my above discussion I am of the considered opinion that inquiry proceedings were conducted by a most impartial person in a most proper way. Findings of the inquiry Officer are proper according to the inquiry proceedings and there is no thing or the file which can say that the inquiry has been vitiated in any manner. In other words I would like to say and reach at the conclusion on the basis of evidence on the file that inquiry was fair and proper. The termination ordered by the management on the basis of Inquiry Officers' report is also just and corrects, so this issue is decided, in favour of management and against the workmen.

Relief.

For the foregoing reasons on the basis of my findings on preliminary issue No. 2. The action of the management is just and correct regarding termination of services of the workmen. So I pass award in all the three cases accordingly.

If the workmen have not been paid, wages in lieu of, notice period, Retrenchment compensation, Bonus and earned leave wages etc. be paid now.

*Note:—Copies of these awards be placed on all the files.*

Dated 4th November, 1986.

V.P. CHAUDHRY,  
Presiding Officer,  
Labour Court, Ambala.

Endst. No. 3073, dated 14th November, 1986

Forwarded (four copies) to the Financial and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of Industrial Disputes Act, 1947.

V. P. CHAUDHRY,  
Presiding Officer,  
Labour Court, Ambala.